**DRAFT**
**COLORADO DEPARTMENT OF TRANSPORTATION COMMENTS**
**on the**

***Initial Findings and Draft Recommendations* (December 21, 2005)**
**of the**
**Task Force on Improving the National Environmental Policy Act**
**And Task Force on Updating the National Environmental Policy Act**
**Committee on Resources**
**United States House of Representatives**

The Task Force on Updating the National Environmental Policy Act (NEPA) of the Committee on Resources, U.S. House of Representatives, released a draft report titled *Initial Findings and Draft Recommendations* (Draft Report) for public comment on December 21, 2005. The Colorado Department of Transportation (CDOT), in cooperation with the Federal Highway Administration Colorado Division (FHWA), prepares hundreds of NEPA documents annually. Thus, CDOT has a stake in the outcome of any proposed legislative changes to NEPA that would affect the NEPA process.

Many of CDOT's comments that follow speak to the need to improve the implementation of NEPA, rather than change the nature of the law itself. The Task Force indicates in its recommendations that a broad-brush change to NEPA law will result in improvements to the system. However, we believe that the question is not "*whether*" NEPA is working but "*how*" it is currently being implemented and whether that implementation follows NEPA's intent. What are the cause-and-effect relationships from Federal to State to local agency? Who has the authority to plan land use, control projects, or determine future zoning? In short, in whose hands is the determination of what is in the best interest of the public good?

The Task Force makes recommendations for significant changes in NEPA's language, assuming that these changes can be effectively adapted by all Federal agencies equally. Clarifying the roles and responsibilities as well as the authorities of the lead agencies is a good idea. However, CDOT is concerned with pitfalls in the "one size fits all" philosophy. Federal agencies differ in their charters and responsibilities. A one-size-fits-all approach for NEPA is inappropriate because of the wide variety of programs and projects the agencies must undertake. For example, the Bureau of Land Management may have a preponderance of relatively small oil and gas NEPA projects that affect public and private lands (typically of a more rural nature, and handled through Categorical Exclusions or Environmental Assessments). On the other hand, U.S. Department of Transportation NEPA projects may be highly complex, involving a grid of interconnected highways and transit components to move millions of vehicles and transit passengers through a dense urban corridor (typically handled via large and highly technically complex Environmental Impact Statements).

At the next level, State agencies such as CDOT that implement Federal agencies' charters (in our case, FHWA), work closely with local agencies. At CDOT, for example, a significant issue under NEPA involves the "chicken and egg" question of land use and growth. Local agencies have the authority to create plans and zoning for their jurisdictions. The authority to control land use planning (locals) and implement needed changes (CDOT) rests in two different places,

creating its own paradox for implementing transportation projects that may be in the interest of the greater public good but may be perceived as less beneficial to locals directly affected by impacts. To grasp the land use/transportation interactions and implications, perhaps those local actions should also be evaluated under NEPA or similar implementing regulations and reflect local agencies' responsibility to perform land use analysis (see also comment on Recommendation 8.2).

CDOT is committed to pursuing measures to improve our implementation of NEPA and reduce the costs associated with NEPA. CDOT has carefully reviewed the Draft Report and provides the following substantive comments to the recommended changes to NEPA provided on pages 25-29 of the Draft Report. The comments are intended to assist the Task Force and Committee on Resources with its further evaluation of the proposed changes.

**GENERAL COMMENTS**

1. **CDOT is concerned about the cascading effects that changes to the legislation itself would have on existing agency efforts to streamline NEPA.** While we applaud the Task Force's efforts to improve NEPA, amending NEPA may have unintended negative consequences to current widespread agency efforts to streamline NEPA. CDOT, in cooperation with FHWA, is currently undergoing substantive changes to streamline our NEPA process under the existing law and well established boundaries provided by the Council on Environmental Quality (CEQ) and the courts. The uncertainty caused by the proposed changes to the existing legislation would make it difficult for implementing agencies like CDOT and FHWA to move ahead with our efforts to streamline NEPA in a timely fashion.

2. **The cost to implement the proposed changes to NEPA should be evaluated prior to adopting any changes.** The proposed changes to NEPA would also require subsequent changes to the existing implementing regulations promulgated by Federal agencies as well as numerous guidance documents adopted by Federal and State agencies to clarify gaps in the existing regulations. The cost to Federal and State agencies for implementing the proposed changes would be substantial and should be addressed by the Task Force and Committee on Resources before any changes are made.

3. **The focus of NEPA reform should be on improving implementation rather than changing legislation.** CDOT's experience with preparing NEPA documents has demonstrated that NEPA compliance can be achieved relatively quickly and for a reasonable cost if implemented and managed properly. CDOT aggressively pursues and uses the categorical exclusions promulgated by FHWA under 23 CFR § 771.117 to effectively evaluate and process hundreds of categorical exclusion projects annually. The NEPA compliance documentation for these projects typically takes less than 60 days. For larger projects requiring an Environmental Assessment (EA) or Environmental Impact Statement (EIS), our experience has shown that properly staffing and managing the NEPA process with highly qualified staff is the most important precursor to cost-effective and timely compliance with NEPA. The conflicts and delays that CDOT sees during the NEPA process do not reflect

shortcomings in the law itself, but can be attributed to the need for better implementation. CDOT suggests that focusing on administrative changes within Federal agencies to improve NEPA implementation would be the most cost-effective method to improve the NEPA process without the potential negative consequences associated with changes to the legislation itself.

## SPECIFIC COMMENTS

### Group 1 – Addressing Delays in the Process

**CDOT Comments on Recommendation 1.1:**
***Amend NEPA to define "major Federal action."***

Amending NEPA to define "major Federal action" to include only new and continuing projects that would require substantial planning, time, resources, or expenditures (without regard to potential environmental consequences) would be contrary to the Congressional declaration of national environmental policy in NEPA (42 USC § 4331). Implementing this recommendation may require a complete re-write of the legislation and underlying regulations for all agencies that have promulgated regulations to implement NEPA. Additionally, the uncertainty regarding how to implement the new definition could result in additional litigation and may be counterproductive for other well-thought-out efforts to expedite the NEPA process.

CDOT respectfully suggests that a more appropriate recommendation would be to require Federal agencies to evaluate their existing regulations related to defining "major Federal actions" and categorical exclusions to determine if these regulations may be in need of revision.

**CDOT Comments on Recommendation 1.2:**
***Amend NEPA to add mandatory timelines for the completion of NEPA documents.***

It is critical to the success of NEPA analysis and documentation to allow technical and scientific professionals as well as the public sufficient time to study and then understand the environmental and social impacts of a proposed action. Proper allocation of time assures solid and complete decision-making.

"Mandatory deadlines" may not take into account the complexity of the action nor required coordination with cooperating agencies. Such an oversight could result in more successful legal challenges to the NEPA process because decisions would be made without sufficient supporting analysis to make an informed decision. Uninformed agency decisions would be more likely to fail the "abuse of discretion" or "arbitrary and capricious" standard because the lead agency did not have time to conclude coordination with cooperating agencies and consider the available information at the time the decision was made.

Each NEPA project has unique technical and environmental challenges that may require extensive interagency coordination (and time) to develop acceptable analytical methods. For example, on some highway projects in Colorado's rapidly growing Front Range, traffic modeling

experts need extended periods of time to develop computerized traffic projection models that adequately combine complex traffic data from different Transportation Management Areas.

Additionally, while NEPA in and of itself may not seem to require timelines longer than those being proposed by the Task Force, layers of other Federally mandated requirements have dramatic impacts on NEPA document preparation schedules. For example, in the case of FHWA NEPA documents, reviews often involve multiple resource agencies with substantive legal jurisdiction or permitting authority over aspects of a proposed project. In many cases, these agencies are formal cooperating agencies; coordination prior to completing the NEPA process is mandatory. While linking multi-disciplinary and multi-agency processes within NEPA is often foreseen as an opportunity to streamline, the level of detail and specificity required to meet multiple agency legal and permitting obligations places a greater burden on the NEPA process. Further, document review and coordination times with outside agencies having jurisdiction over portions of a proposed project depend on adequate staffing and funding within these outside agencies. These aspects of the NEPA process are outside the control of the lead agency and do not lend themselves to the mandatory time limits proposed by the Task Force.

Before imposing an 18-month limit for EISs and a 9-month limit for EAs, CDOT suggests that each Federal agency report to the Task Force its findings about those aspects of NEPA document preparation that are currently causing timelines to exceed the proposed limits. The Task Force might then propose administrative changes to these specific facets of the NEPA process to improve the timeliness of NEPA compliance.

**CDOT Comments on Recommendation 1.3:**
***Amend NEPA to create unambiguous criteria for the use of Categorical Exclusions (CE), Environmental Assessments (EA), and Environmental Impact Statements (EIS).***

Per existing CEQ regulations (40 CFR § 1507.3 [b][2]), each agency has an established list of categorical exclusions to streamline the NEPA process. This process works quite well because the types of agency actions conducted by different agencies vary greatly. The introduction of new standards for categorical exclusions such as “clearly minimal” or “compelling evidence” would result in additional litigation and require new guidance to clarify their meaning.

An amendment to NEPA in this area would require each agency to re-evaluate and amend its own list of categorical exclusions at considerable expense. The new highway legislation, SAFETEA-LU (2005), also provides for the establishment of new categorical exclusion requirements in the transportation field. Before changes to NEPA are recommended, the new provisions of SAFETEA-LU should be evaluated to determine if they provide an appropriate means to address the categorical exclusion needs for other agencies.

**CDOT Comments on Recommendation 1.4:**
***Amend NEPA to address supplemental NEPA documents.***

There is little potential benefit of incorporating existing CEQ regulations on supplemental NEPA documents into NEPA itself. In fact, efforts to do so may prove counterproductive for streamlining NEPA. Selectively restating portions of the CEQ regulations within NEPA is likely to alter the interpretation of well-established terminology, leading to uncertainty and

opportunities for additional litigation. The amendments to NEPA described in this recommendation would be repetitive and are unnecessary to expedite the NEPA process.

## Group 2 – Enhancing Public Participation

**CDOT Comments on Recommendation 2.1:**
***Direct CEQ to prepare regulations giving weight to localized comments.***

In order to maintain the credibility of the NEPA process, the environmental impact analysis contained in a NEPA document must be as objective as possible and based on the best available science. To provide "more weight" to any particular interest group's comments (including local interests) when evaluating environmental impacts will jeopardize the credibility of the impact analysis and the NEPA process itself. Public participation must remain equal for all parties and the weight and value of all public comments and participation weighted on their merits. Weighting comments outside of their intrinsic value provides certain groups with additional power in the NEPA process that is unwarranted.

This recommendation assumes that local interests are the ones most affected by a project. In transportation, this is often not the case. Transportation proposals often address not only local issues, but also regional, State, and even national needs. Weighting local comments would allow local issues and concerns to supersede State and national needs. This reduces the ability of State and Federal agencies to operate because State and Federal programs would be subservient to local interests.

**CDOT Comments on Recommendation 2.2:**
***Amend NEPA to codify the EIS page limits set forth in 40 CFR 1502.7.***

The Code of Federal Regulations (40 CFR § 1502.7) already contains these page limits. As mentioned in the previous comment, there is little potential benefit of restating existing CEQ regulation in NEPA. Furthermore, enforcing page limits without regard to the complexity of the project could lead to more successful legal challenges to NEPA documents and agency decisions. A 300-page document that provides inadequate information for decision-making is less useful (and more open to legal challenge) than a 600-page document that clearly supports the record of decision and agency action.

Based on CDOT's experience, a heightened sensitivity and response to public and agency concerns beyond those that NEPA and CEQ regulations require are often the cause for NEPA documents to exceed the page limits proposed. Focusing the responses on significant issues raised by the public and agency stakeholders and tailoring the level of analysis to be commensurate to the degree of potential impact is the responsibility of the lead agency's NEPA management team. CDOT experience has shown that properly staffing and managing the preparation of a NEPA document is the best method for controlling the length and cost of NEPA documents. Strong technical writers and editors are also key to the development of focused, well-written documents.

Before this recommendation is adopted, each Federal agency should be given the opportunity to address those facets of NEPA documentation that cause documents to exceed proposed page limits and disclose the consequences of editing or condensing vital information into fewer pages. The Task Force should clarify whether this recommendation was intended to call for brevity in each document for the ease of reviewers and cost-savings, or to cause a paradigm shift toward a lessened level of impact analysis.

## Group 3 – Better Involvement for State, Local, and Tribal Stakeholders

**CDOT Comments on Recommendation 3.1:**
***Amend NEPA to grant Tribal, State and local stakeholders cooperating agency status.***

Where State, local, and Tribal stakeholders have jurisdiction over aspects of a proposed project or are directly affected by the project itself, it is appropriate to grant these stakeholders cooperating or participating agency status. It should be noted, however, that the addition of multiple cooperating agencies to any NEPA process adds complexity, which translates into additional time to complete NEPA documents and additional costs. Granting any stakeholder who may take issue with a particular proposed project cooperating agency status is counterproductive to timely completion of the NEPA process.

Each cooperating agency typically must use its own funds and allocate staff resources to participate in meetings (often requiring travel) and review preliminary reports and documents (40 CFR § 1501.6). State, local and Tribal stakeholders often have insufficient funding or necessary staff to participate actively in meetings and complete document reviews in a timely manner. It is unclear in any of the recent initiatives being proposed at a national level whether increased funding will be made available to local agencies and Tribes to enhance their participation in the planning or NEPA processes.

Those local agencies seeking cooperating agency status must be willing and able to take on the responsibility (professionally and financially) associated with that involvement. CDOT believes that the most effective involvement of local agencies starts in the planning process, where the local agencies document and define their need for projects or future development, which is in turn placed into their planning and zoning documents, which are in turn used as a basis for NEPA alternatives analysis and final project selection.

Additionally, cooperating agencies are often required to assume responsibility for developing information for the NEPA document concerning those aspects for which the cooperating agency has special expertise. This recommendation to require the lead agency to grant cooperating agency status to any stakeholder that requests it will lengthen document review times, cause project delays, and add additional costs to the applicant and agency responsible for funding the NEPA process.

A provision similar to this recommendation applicable to Federal transportation projects was included in SAFETEA-LU (2005). Before changes to NEPA are considered, the Task Force should determine if the provisions in SAFETEA-LU provide a template for changes to NEPA implementation in this area. Any changes to NEPA on this point will create confusion for

transportation agencies across the country as they try to determine which standards are applicable: those in the NEPA amendments or those in SAFETEA-LU.

**CDOT Comments on Recommendation 3.2:**
***Direct CEQ to prepare regulations that allow existing State environmental review process to satisfy NEPA requirements.***

The "functional equivalence" doctrine already exists within NEPA to allow existing environmental review processes to satisfy NEPA requirements where applicable (see Alabamians for a Clean Env't v. Thomas, 26 ERC 2116 [D. Ala. 1987]).

**Group 4 – Addressing Litigation issues**

**Comment on Recommendation 4.1:**
***Amend NEPA to create a citizen suit provision.***

Adding a citizen suit provision to NEPA is unnecessary and may be counterproductive as it will create an additional avenue for litigation. Citizen suit provisions are typically included in legislation to *increase* access to the courts, not discourage litigation. One reason that there is "relatively little in the way of NEPA lawsuits as a percentage of the total number of EISs filed each year" (Draft Report p. 11), and that 99.97% of NEPA projects go forward without injunctive relief, is the current lack of a citizen suit provision in NEPA, and the relatively difficult standard of proof (arbitrary and capricious or abuse of discretion) required to challenge a final agency action under the Administrative Procedure Act (APA). The APA already requires that parties must have been involved in the administrative process in order to have standing (see Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519 [1978]), and current case law in this area provides clear guidelines regarding who has standing and who does not (see National Wildlife Federation v. Lujan, 497 U.S. 871). The changes the Task Force suggests will not streamline or reduce the amount of NEPA litigation, and may in fact do the opposite.

**CDOT Comments on Recommendation 4.2:**
***Amend NEPA to add a requirement that agencies "pre clear" projects."***

CEQ already provides guidance documents to Federal agencies that contain information on how recent court decisions should be interpreted and implemented. However, there are also circumstances in which judicial or administrative decisions are relatively specific to an agency. In such cases, it is more appropriate for the individual agencies to analyze the case law implications and provide internal guidance on implementation.

**Group 5 – Clarifying Alternatives Analysis**

**CDOT Comments on Recommendation 5.1:**
***Amend NEPA to require that "reasonable alternatives" analyzed in NEPA documents be limited to those which are economically and technically feasible.***

With reference to CDOT's comments on Recommendation 3.1, the same general concept regarding local agencies applies. While this process may not apply to all NEPA documentation needs for all Federal agencies, transportation projects under the USDOT provisions will fall under this comment.

The economic feasibility of a proposed action (or group of actions) should be considered early in the planning process for a region or local jurisdiction (or State). At a fairly broad level (that is, pre-engineering feasibility), planning organizations (often representing a number of local agencies) are able to determine and document the needs and development potential for an area. At that point, the agency can conduct an economic feasibility analysis that results in the ability to document which projects will fit under that umbrella of funding, list these projects in their plan, and finally move forward into NEPA, thus limiting—purposefully—the number of alternatives to be evaluated under NEPA. This process was described in detail in two FHWA guidance documents (see D.J. Gribbin 2005) on "linking planning and NEPA," and "tolling." Without this precursor to NEPA, State and Federal agencies are left to retroactively "second guess" the needs of a local agency. Logically, only those projects and alternatives noted in the planning phase would then be carried forward as economically feasible for NEPA.

Along with this nod toward the planning process, however, come new issues. Discussion among transportation agencies concerns the current requirement to restrict project alternatives to those consistent with financially constrained long-range transportation plans—a result of the linkages between transportation planning processes and the Clean Air Act. Dilemmas exist for transportation agencies, particularly in rapidly growing and developing regions of the country. Limiting the definitions and ranges of alternatives to those consistent with fiscally constrained long-range plans can result in artificial segmentation of long-term transportation options. Therefore, there is a likelihood that sizing the transportation system for the short-term may be the norm, and that addressing transportation needs in the long-term will become incrementally more expensive if fiscal constraints severely limit the range of alternatives to be considered in a NEPA analysis.

When work on NEPA documents occurs during periods of austere State and local budgets, the financial constraint requirements may result in understandably shortsighted decision-making. Using the NEPA analysis as a means to evaluate long-term transportation alternatives that may not be affordable within 20 years but may be necessary beyond 20 years becomes difficult. Under current regulations, the recommended action in a decision document for a transportation improvement has to be limited by what can be afforded within a fiscally constrained long-range transportation plan (State or regional).

Both sides of this dilemma point to the need for long-range transportation planning to have some environmental impact analysis components either linked to NEPA and recognized/documented as such or, if not linked, required to meet certain combinations of environmental and financial feasibility goals and objectives outside NEPA requirements. This effort is being addressed via SAFETEA-LU (2005).

The requirement that an alternative be economically and technically feasible already exists (Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 551 [1978]). Requiring that each alternative in an EIS be backed by feasibility and

engineering studies will drive up the costs of EISs and further complicate the process of preparing NEPA documents. All that is required and necessary is sufficient economic and technical detail to judge feasibility and identify to potential environmental impacts.

**CDOT Comments on Recommendation 5.2:**
***Amend NEPA to clarify that the alternative analysis must include consideration of the environmental impact of not taking an action on any proposed project.***

The requirement to include an informed and meaningful discussion of the No Action alternative in an EIS already exists (see Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228 [9th Cir. 1988]). This recommendation misrepresents that the current regulations require that the No Action alternative merely be listed as an alternatives. Most Federal agencies, NEPA practitioners, and the courts recognize that the No Action alternative deserves comparable treatment to that provided for other alternatives.

**CDOT Comments on Recommendation 5.3:**
***Direct CEQ to promulgate regulations to make mitigation proposals mandatory.***

Mitigation is usually included in NEPA decision documents, and courts have repeatedly found that mitigation commitments in a NEPA decision document are enforceable.

## Group 6 – Better Federal Agency Coordination

**CDOT Comments on Recommendation 6.1:**
***Direct CEQ to promulgate regulations to encourage more consultation with stakeholders.***

While early coordination and periodic meetings with stakeholders are critical to the success and timely conclusion of the NEPA process, requiring excessive coordination with stakeholders will add time and cost to the preparation of NEPA documents and add additional procedural steps that will be focal points for litigation. Beware the temptation to add more procedural requirements when attempting to streamline a process.

CDOT already uses an extensive public and stakeholder participation process and goes well beyond the letter and intent of NEPA. Adding requirements encouraging more consultation with stakeholders may directly compete with the objective of Recommendation 1.2.

**CDOT Comments on Recommendation 6.2:**
***Amend NEPA to codify CEQ regulation 1501.5 regarding lead agencies.***

Development in statute of the roles and responsibilities of lead agencies could be useful, but the exact roles and responsibilities must be carefully considered to ensure that they do not create additional bureaucracy. How would the role of lead agency under the proposed recommendation affect the roles and responsibilities of other agencies under other, more substantive, existing laws and regulations? See also CDOT's General Comments.

## Group 7 – Additional Authority for the Council on Environmental Quality

**CDOT Comments on Recommendation 7.1:**
***Amend NEPA to create a "NEPA Ombudsman" within the Council on Environmental Quality***

Expanding government by creating a "NEPA Ombudsman" office within CEQ will not result in streamlining the NEPA process and may be counterproductive. Such an office within CEQ will add a layer of NEPA decision-making authority that is likely to lengthen document review timelines, delay completion of the NEPA process, add costs, and add confusion regarding the respective roles of the lead agency and CEQ. Before such an office is created, the potential direct and indirect costs of creating this new regulatory body should be evaluated.

**CDOT Comments on Recommendation 7.2:**
***Direct CEQ to control NEPA-related costs.***

Efforts to control NEPA costs should be balanced with an understanding that NEPA projects are completed in a timely way when they are properly funded and staffed. Arbitrary cost ceilings without regard to the complexity of a proposed project may backfire and result in substantial project delays if cost ceilings cause project budget limitations that result in fewer agency staff or consultant staff attempting to meet the same (or similar) NEPA regulatory requirements.

Additionally, it is unclear how CEQ could come to consensus on what a reasonable cost is for a particular NEPA document. For example, controlling costs as a percentage of the construction cost or something similar could help prevent runaway NEPA documents where there is a prescribed construction cost, but many NEPA (like programmatic documents) are not directly related to construction projects.

CDOT suggests that costs could be better controlled by focusing Federal agency efforts on developing guidance requiring more clearly defined projects prior to initiating the NEPA process, and requiring more focused NEPA documents that analyze in detail only those resources that are identified during scoping as issues of significant concern. Additionally, as mentioned previously, CDOT's experience has shown that managing the NEPA process with highly qualified staff is the best way to ensure cost-effective compliance with NEPA.

## Group 8 – Clarify Meaning of "Cumulative Impacts"

**CDOT Comments on Recommendation 8.1:**
***Amend NEPA to clarify how agencies would evaluate the effect of past actions for assessing cumulative impacts.***

This issue has already been addressed by CEQ in its guidance on addressing past actions in cumulative effects in June 2005. There is no need to amend NEPA to address this issue until Federal agencies have had adequate time to implement the new guidance issued by CEQ.

**CDOT Comments on Recommendation 8.2:**

***Direct CEQ to promulgate regulations to make clear which types of future actions are appropriate for consideration under the cumulative impact analysis.***

While it would simplify the analysis of cumulative impacts to limit the analysis of future actions to concrete proposed actions (rather than those that are "reasonably foreseeable"), this could encourage the artificial staggering and segmenting of proposals so that individual projects do not seem to cumulatively rise to the level of a major Federal action, or have significant environmental impacts. This could promote environmental degradation over time and would be contrary to the original intent of NEPA. The "social, economic and other requirements of present and *future* generations of Americans" (emphasis added) were a concern expressed in NEPA's original language. Full analysis of cumulative effects as they relate to future foreseeable actions does not require any particular alternative to be selected, nor even that there be additional mitigation required, but it does inform the public about environmental trends and provide critical information for agency planners and decision makers.

Because cumulative effects also considers past actions, CDOT will comment on these as well. The evaluation of the effects of past actions via the cumulative impacts analysis should be available from land use proposals, as noted in CDOT's earlier comments regarding the planning process as a precursor to NEPA. If the cumulative effects analysis is completed by the local agencies or planning organizations, the local agencies are in the "driver's seat," so to speak – that is, they have control over land use planning and the State and Federal transportation agencies are not required to second-guess the needs of a region. If local agencies choose not to be involved in the NEPA process either at the planning or project level, State transportation agencies should not be required to evaluate land use plans and their impact on cumulative effects analysis.

## Group 9 – Studies

**CDOT Comments on**
**Recommendation 9.1:** ***CEQ study of NEPA's interaction with other Federal environmental laws.***
**Recommendation 9.2:** ***CEQ Study of current Federal agency NEPA staffing issues.***
**Recommendation 9.3:** ***CEQ study of NEPA's interaction with State "mini-NEPAs" and similar laws.***

CDOT supports recommendations 9.1, 9.2, and 9.3, and feels that these studies should be completed prior to adopting any of the previous recommendations made by the Task Force.

While in many cases there is some overlap between the analysis required by NEPA and the analysis required by other Federal environmental laws, NEPA analysis often identifies impacts that would have been missed under other environmental laws alone. For example, a mine proposal that creates high sulfide waste rock piles may not initially require a water quality discharge permit because there is no apparent storm water or wastewater discharge from the waste rock piles. The broader water quality analysis under NEPA, however, might identify that over time the water seeping into the waste rock piles from normal precipitation will cause acid mine drainage and pollute adjacent bodies of surface water in the future.